

SENATE BILL NO. 78  
COMMITTEE NO. 2  
DATE 1-18-07  
BILL NO. SB 78

Senate Bill 78  
January 18, 2007  
Presented by Chris Smith  
Senate Fish and Game Committee

Mr. Chairman, members of the Committee, I am Chris Smith, Chief of Staff for the Department of Fish, Wildlife & Parks (FWP). FWP stands in support of SB 78.

The attachment of fences to bridge abutments across public rights-of-way has become an issue recently at a handful of crossings. FWP believes it is appropriate for landowners to fence to the bridge abutment to contain livestock. However, the fence should not be an impediment to public seeking access via the right-of-way to the stream.

SB 78 seeks to codify an Attorney General's opinion that states that a public road crossing a public waterway is the intersection of two public rights-of-way. The bill goes on to clarify that fences to abutments are legal as long as they do not impede public access to the waterway either through, around or over the fence.

SB 78 does not expand the public's rights under stream access. The bill does not require improvements that make every bridge access a full-fledged FAS. In fact, the bill does not require any improvements at all by counties. The bill does recognize the public's right of access, the landowner's need to constrain livestock, and the County's responsibility for road and right-of-way management.

FWP has worked with county commissioners, Trout Unlimited, the Montana Wildlife Federation and others to draft amendments to address concerns with the original language. The concerns were that the county commissioners might not have sufficient discretion to address on-the-ground situations in practical ways and that the language could be read to require counties to develop access beyond what already exists. The amendments successfully address these issues.

FWP urges your support of SB 78.

## FWP Bridge Access Inventory

Inventory assesses the status of stream access at bridges in each FWP administrative region.

- For the purpose of this inventory, "Bridge Access Site" means a bridge that intersects a river or stream that is capable of recreational use and the adjacent property is privately owned (does not include sites located on public land).
- Inventory does not include FWP Fishing Access Sites located at bridges unless the sites are located on leased private land.

	<u>Column A</u>	<u>Column B</u>	<u>Column C</u>
	Number of bridge access sites that are <u>infrequently</u> used by the public (now or in the past) to gain access to a river or stream.	Number of bridge access sites that are <u>frequently</u> used by the public (now or in the past) to gain access to a river or stream.	Number of bridge access sites where access is <u>impeded or unavailable</u> due to the presence of a fence, uncooperative landowner, etc. (Note: Does not include sites where a fence exists but the public is still able to access the stream without too much difficulty).
1	52	12	0
2	47	74	9
3	438	218	45
4	52	25	32
5	24	79	10
6	52	38	0
7	166	4	35
<b>TOTALS:</b>	<b>831</b>	<b>450</b>	<b>131</b>